

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

|                     |   |                             |
|---------------------|---|-----------------------------|
| TIMOTHY BUFORD,     | ) | No. CV-F-02-5313 OWW/DLB PC |
|                     | ) |                             |
|                     | ) | ORDER ADOPTING FINDINGS AND |
| Plaintiff,          | ) | RECOMMENDATION (Doc. 146);  |
|                     | ) | GRANTING DEFENDANTS' MOTION |
| vs.                 | ) | TO DISMISS (Doc. 122) AND   |
|                     | ) | DISMISSING ACTION FOR       |
|                     | ) | FAILURE TO EXHAUST          |
|                     | ) | ADMINISTRATIVE REMEDIES     |
| MTA HAGGIE, et al., | ) |                             |
|                     | ) |                             |
|                     | ) |                             |
| Defendant.          | ) |                             |
|                     | ) |                             |
|                     | ) |                             |

On August 1, 2007, the United States Magistrate Judge recommended that Plaintiff's action be dismissed for failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e(a).

Plaintiff timely filed objections to the recommendation and an attachment to the objections.

In accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a *de novo* review of this case.

Based on this *de novo* review, the Court concurs with the findings and recommendation that the action be dismissed for

1 Plaintiff's failure to exhaust administrative remedies.

2       Plaintiff's assertions that delay by prison officials in  
3 processing his grievances until he was paroled excuse the  
4 required exhaustion is unavailing under the circumstances of this  
5 case because after Plaintiff was located and provided with the  
6 first level denial of his grievance, Plaintiff did not complete  
7 the grievance process but filed this litigation. Plaintiff's  
8 references to a report by the Office of the Inspector General  
9 criticizing the third level responses by prison authorities does  
10 not establish that Plaintiff's failure to exhaust administrative  
11 remedies is excused because Plaintiff did not proceed to the  
12 third level. Furthermore, there is no authority that delay *per*  
13 *se* excuses the exhaustion requirement. Plaintiff's argument that  
14 he ceased being a prisoner for purposes of Section 1997e(a) when  
15 he was released on parole and, therefore, was no longer subject  
16 to the exhaustion requirement, is without merit because Plaintiff  
17 parole status was revoked and Plaintiff returned to the custody  
18 of the CDRC before he filed this action and was in the custody of  
19 the CDRC at the time he filed this action.

20       Accordingly, IT IS HEREBY ORDERED that:

21       1. The Findings and Recommendations, filed August 1, 2007,  
22 are ADOPTED IN FULL;

23       2. Defendants' motion to dismiss for failure to exhaust  
24 administrative remedies is GRANTED and this action is DISMISSED.

25 ///

26 ///

IT IS SO ORDERED.

**Dated: September 27, 2007**

**/s/ Oliver W. Wanger**  
UNITED STATES DISTRICT JUDGE